

PART 933 — PROTESTS, DISPUTES, AND APPEALS

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Authority: 42 U.S.C. 7101 et seq., and 50 U.S.C. 2401 et seq..

Source: 51 FR 31336, Sept. 3, 1986, unless otherwise noted.

Subpart 933.1 — Protests.

933.102 General.

(b) The Heads of Contracting Activities (HCA), for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, provide corrective relief in response to a protest in accordance with 48 CFR 33.102(b).

[63 FR 53758, Oct. 16, 1997, as amended at 74 FR 36357, July 22, 2009]

933.103 Protests to the agency.

(i) Protests filed with the contracting officer before or after award shall be decided by the HCA except for the following cases, which shall be decided by the Senior Procurement Executive:

(1) The protester requests that the protest be decided by the Senior Procurement Executive.

(2) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(3) The HCA concludes that one or more of the issues raised in the protest have the potential for

significant impact on Department of Energy (DOE) acquisition policy.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral party. Both the protester and the Department must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in 48 CFR 33.104(a)(3)(iv). The Senior Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (i) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

[74 FR 36358, July 22, 2009; 75 CFR 2459, May 26, 2010]

933.104 Protests to GAO.

(a)(2) The contracting officer shall provide the notice of protest.

(b) *Protests before award.* (1) When the Department has received notice from the Government Accountability Office (GAO) of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the HCA in accordance with 48 CFR 33.104(b). Before the HCA authorizes the award, the required finding shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Senior Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO.

(c) *Protests after award.* Before the HCA authorizes performance, the finding required by 48 CFR 33.104(c)(2) shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Senior Procurement Executive.

(g) *Notice to GAO.*

(1) The report to the GAO regarding a decision not to comply with the GAO's recommendation, discussed at 48 CFR 33.104(f), shall be provided by the HCA making the award, after approval of the Senior Procurement Executive. If a DOE-wide policy issue is involved, the report shall be provided by the Senior Procurement Executive.

(2) It is the policy of the Department to comply promptly with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) The GAO does not have jurisdiction to consider subcontractor protests.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36358, July 22, 2009; 75 FR 29459, May 26, 2010]

933.106 Solicitation provisions.

(a) The contracting officer shall supplement the provision at 48 CFR 52.233-2, Service of Protest, in solicitations for other than simplified acquisitions by adding the provision at 952.233-2.

(b) The contracting officer shall include the provision at 952.233-4 in solicitations for purchases above the simplified acquisition threshold.

(c) The contracting officer shall include the provision at 952.233-5 in solicitations for purchases above the simplified acquisition threshold.

[61 FR 41702, Aug. 9, 1996, as amended at 74 FR 36358, July 22, 2009; 75 FR 29459 May 26, 2010]